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## Portraits of Criminals on Bruce Springsteen's Nebraska: The Enigmatic Criminal, The Sympathetic Criminal, and The Criminal as Brother

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PORTRAITS OF CRIMINALS ON BRUCE  
SPRINGSTEEN'S *NEBRASKA*: THE ENIGMATIC  
CRIMINAL, THE SYMPATHETIC CRIMINAL, AND THE  
CRIMINAL AS BROTHER

Samuel J. Levine\*

INTRODUCTION

From the moment we first hear the bleak harmonica and lethargic acoustic guitar that open the 1982 album *Nebraska*,<sup>1</sup> we immediately realize that we are witnessing a different side of Bruce Springsteen's artistry, far removed from the rocking style that has dominated nearly all of his previous work.<sup>2</sup> Indeed, in bold and stark contrast to *The River*<sup>3</sup>—the wildly successful double album that just two years earlier produced Springsteen's first number-one record and top-five single—*Nebraska* contains few, if any, of the musical elements that typically bring commercial success. Perhaps even more strikingly, the verses of the opening track, delivered through the persona of mass murderer Charles Starkweather, alert us that in the album's lyrics we will encounter a darkly disturbing perspective on life and the world—something highly unusual in a record intended for a popular audience.<sup>4</sup>

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<sup>1</sup> BRUCE SPRINGSTEEN, *NEBRASKA* (Columbia Records 1982).

<sup>2</sup> In particular, each of Springsteen's previous albums opened with a catchy tune and a stirring song that captured the album's musical tone. In contrast, upon hearing the opening notes of *Nebraska*, we preview the subdued motifs that run throughout the record.

<sup>3</sup> BRUCE SPRINGSTEEN, *THE RIVER* (Columbia Records 1980).

<sup>4</sup> See BRUCE SPRINGSTEEN, *Nebraska*, on *NEBRASKA* (Columbia Records 1982).

To be sure, a survey of Springsteen's previous albums reveals a body of work that is far from monolithic, ranging from acoustic and country ballads to rockabilly and rhythm and blues to more well-known rock anthems. In addition, since his earliest albums, many of Springsteen's themes had consistently, and in many ways increasingly, explored the darker sides of human nature.<sup>5</sup> Nevertheless, *Nebraska* stands out in the extent to which, with few exceptions, a steady hollowness permeates the solo and acoustic musical performance, while the lyrics present a nearly relentless portrayal of deep desperation and despair. A number of themes run through *Nebraska*, including some that appear on almost any Springsteen album, such as reflections on family and relationships, descriptions of hopes and dreams, and constant references to cars and driving. Yet, while other albums express these themes at times with ambivalence and often with some measure of optimism,<sup>6</sup> most of the characters on *Nebraska* have little if any reason to believe.<sup>7</sup>

To the lawyer, the album may prove most significant in its focus on yet another theme, likewise common to many Springsteen albums, but again manifested in a unique manner on *Nebraska*: the decisions, actions, and perspectives of criminals.<sup>8</sup> Indeed, perhaps

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<sup>5</sup> Both *Darkness on the Edge of Town* and *The River*, the two albums immediately preceding *Nebraska*, contain several songs that qualify among the most somber in Springsteen's collected work. See generally BRUCE SPRINGSTEEN, *THE RIVER* (Columbia Records 1980); BRUCE SPRINGSTEEN, *DARKNESS ON THE EDGE OF TOWN* (Columbia Records 1978).

<sup>6</sup> Even *Darkness on the Edge of Town*, despite its title and correspondingly dark outlook, allows for a degree of hope considerably greater than any optimism present in the music or lyrics of *Nebraska*.

<sup>7</sup> The phrase that completes this sentence borrows from the title of the song that closes *Nebraska*. BRUCE SPRINGSTEEN, *Reason to Believe*, on *NEBRASKA* (Columbia Records 1982). Although the song's title might suggest a rejoinder to the pessimism that conquers nearly every song that precedes it, the song actually consists of a strange amalgam of scenarios that embody loss and defeat, followed by the narrator's puzzlement at the possibility that others can find hope within these situations. See *id.* (lyrics demonstrating these scenarios and the narrator's emotions).

<sup>8</sup> To be sure, other songwriters have written passionately and powerfully about crime and criminals, perhaps most obviously Bob Dylan, who has often explored the role and perspective of the American outlaw, see Adam Gearey, *Outlaw Blues: Law in the Songs of Bob Dylan*, 20 CARDOZO L. REV. 1401, 1401 (1999), and who has leveled scathing critiques against legal systems producing

fittingly, among the figures whom inhabit the dark universe Springsteen created on *Nebraska*, some of the most memorable include the variety of criminals he portrays. Defying simplistic judgments and categorizations, Springsteen confronts us with an uncompromising examination of and, consequently, a more truthful and realistic reflection upon the complexities of crime, criminals, and our justice system. Ultimately, through the effective use of both substance and form, and through a combination of powerful narrative and spare musical accompaniment, Springsteen leads us to reexamine the way we look at criminals and perhaps rethink some of the ways we look at criminal justice in the United States.<sup>9</sup>

### I. THE ENIGMATIC CRIMINAL: "NEBRASKA"

When we first place *Nebraska* in the CD player (or, when it was released, on the turntable or in the tape deck), we might anticipate that, like Springsteen's previous albums, the record will begin with a catchy or upbeat song.<sup>10</sup> Instead, against the backdrop of listless harmonica and guitar playing, the singer delivers his

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unjust outcomes. See, e.g., BOB DYLAN, LYRICS: 1962-2001, at 75, 95-96, 355-57 (2004); see also Michael A. Coffino, Comment, *Genre, Narrative and Judgment: Legal and Protest Song Stories in Two Criminal Cases*, 1994 WIS. L. REV. 679, 680 ("examin[ing] law and folk protest music—and compar[ing] the stories they produced about two criminal cases"). Nevertheless, *Nebraska* may be the only work of popular music to include references to: "the DA"; a public defender; a state trooper, highway patrolman, sheriff, and off-duty police officer; a gambling commissioner; judges; a bailiff; evidence; a jury that renders a "guilty verdict"; and sentences of death and of life in prison. See BRUCE SPRINGSTEEN, SONGS 143-153 (1998).

<sup>9</sup> Viewed in this sense, *Nebraska* may be conceptualized as a valuable contribution to the body of literature comprising legal narrative, see Samuel J. Levine, *Halacha and Aggada: Translating Robert Cover's Nomos and Narrative*, 1998 UTAH L. REV. 465, 467-68 n.8 (citing sources), characterized by the reliance on stories to illustrate lessons of legal significance in a manner that at times proves more effective than formal legal analysis. See Samuel J. Levine, *Professionalism Without Parochialism: Julius Henry Cohen, Rabbi Nachman of Breslov, and the Stories of Two Sons*, 71 FORDHAM L. REV. 1339, 1343 n.19 (2003) (quoting Robert L. Hayman, Jr. & Nancy Levit, *The Tales of White Folk: Doctrine, Narrative, and the Reconstruction of Racial Reality*, 84 CAL. L. REV. 377, 435-36 (1996)). See generally Coffino, *supra* note 8.

<sup>10</sup> See *supra* note 2.

lines in a hushed monotone, at times barely completing his sentences. In the opening stanza, the idyllic picture of a girl "standin' on her front lawn just twirlin' her baton,"<sup>11</sup> a portrait that seems to capture Springsteen's vision of American goodness and beauty, collides in shocking juxtaposition with the speaker's nonchalant and nearly detached observation that "[m]e and her went for a ride, sir, and ten innocent people died."<sup>12</sup> In this manner, we are introduced to the album, the title track, and, more ominously, the persona of the mass murderer Charles Starkweather, the first and most disturbing of the criminals we will encounter.

The speaker reflects upon the killing spree in which—traveling from Lincoln, Nebraska through Wyoming, across the American heartland central to many of Springsteen's songs—"I killed everything in my path."<sup>13</sup> Reflection, however, does not lead to remorse; he remains decidedly unrepentant, unable even to "say that I'm sorry for the things that we done," and offering only the bizarre justification that "[a]t least for a little while, sir, me and her we had us some fun."<sup>14</sup> Sentenced to death but defiant to the end, in his last request to the sheriff, eerily devoid of emotion, he demands that "when the man pulls that switch, sir, and snaps my poor head back / You make sure my pretty baby is sittin' right there on my lap."<sup>15</sup>

In the song's final stanza, the speaker ponders his fate and appears briefly even to contemplate the moral implications of his actions, solemnly recounting that "they"—presumably the jury, and perhaps also the judge, the sheriff, or society in general—"declared me unfit to live, [and] said into that great void my soul'd be hurled."<sup>16</sup> The listener might expect that in this context, Springsteen will conclude the song with some element of resolution, or at least explanation, to help us grapple with an

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<sup>11</sup> SPRINGSTEEN, *Nebraska*, *supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* The macabre nature of the request is amplified through the substitution of "my pretty baby" in place of the "sawed-off .410" that, in an earlier line in the song, was pictured "on my lap." *Id.*

<sup>16</sup> *Id.*

otherwise unfathomable scenario. Indeed, the penultimate line of the song compounds such expectations; the speaker acknowledges that "they"—surely referring now to us as much as to other characters in the story—"wanted to know why I did what I did."<sup>17</sup> In the end, however, Springsteen leaves us no closer to understanding this enigmatic figure who, with an almost palpable shrug, utters only the cryptic response: "[W]ell, sir, I guess there's just a meanness in this world."<sup>18</sup> Thus, through the album's first portrait of a criminal, Springsteen offers the disheartening but valuable lesson that exploration of the criminal mindset may not yield any insight into the mysteries of senseless criminal acts, their causes, or their motivations.

## II. THE SYMPATHETIC CRIMINAL

A very different portrait of the criminal emerges in a number of other songs on the album. To varying degrees, these criminals recognize and regret their wrongful ways, while at the same time they provide an often sympathetic, if not convincing, explanation for their conduct. Indeed, in the context of the dark universe that envelops the characters who populate the album, we can begin to understand the forces that have driven these individuals to their criminal ways.

### A. "*Atlantic City*"

In "*Atlantic City*,"<sup>19</sup> another story told from the perspective of the criminal, the song's opening stanzas paint a world of crime and disorder, a world in which "they blew up the chicken man . . . [and] his house"; fights are brewing on the boardwalk and the promenade; "there's trouble busin' in from outta state"; and even the district attorney and gambling commissioner seem unable or unwilling to perform their duties.<sup>20</sup> This setting of chaotic lawlessness gives added meaning to the speaker's powerful declaration of utter desperation: "I got debts that no honest man

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> BRUCE SPRINGSTEEN, *Atlantic City, on NEBRASKA* (Columbia Records 1982).

<sup>20</sup> *Id.*

can pay."<sup>21</sup> The nearly paradoxical nature of this phrase suggests its own strangely compelling syllogism: the speaker wants to pay his debts, but his debts are so substantial that he cannot pay them if he remains an honest man; therefore, he will choose the only viable alternative, to pay his debts through dishonesty, manifesting itself in criminal activity.

In addition to the internal logic of the argument, Springsteen provides emotional depth to the narrator's position, describing the experiences that have contributed to a condition he can no longer endure. The speaker has tried earnestly to cling to and offer some semblance of hope, valiantly promising that "our luck may have died and our love may be cold / But with you forever I'll stay."<sup>22</sup> The promise, however, is not easily fulfilled because, as he explains tersely, in the tough and gritty world he inhabits, the stakes are high and the possibilities are starkly simple: "[I]t's just winners and losers and don't get caught on the wrong side of that line."<sup>23</sup> Having failed too often in the past and "tired of comin' out

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<sup>21</sup> *Id.* This quotation reflects the version of the song performed on the record as well as the words included in both an earlier draft and a later reprinting of the song's lyrics. The lyrics issued in the album include a slightly different and less powerful version of the line: "I got in too deep and could not pay." *See id.* Notably, in the earlier draft, the line is addressed to the "judge," SPRINGSTEEN, SONGS, *supra* note 8, at 145, thus apparently intended as a plea for mercy, hinting to Springsteen's suggestion, more fully developed in other songs on the album, that the law take into consideration the sometimes desperate conditions that may give rise to criminal conduct. *See* discussion *infra* II.B. and II.C.

<sup>22</sup> SPRINGSTEEN, *Atlantic City*, *supra* note 19. Indeed, "Atlantic City" contains some of the album's rare glimpses of limited hope, including a chorus recognizing "[e]verything dies, baby, that's a fact," but insisting that "maybe everything that dies some day comes back," and concluding with a note of stubborn optimism: "Put your makeup on, fix your hair up pretty / And meet me tonight in Atlantic City." *Id.* In addition, the song may offer the album's closest resemblance to more typical Springsteen rock music. Thus, in a note to his manager, Jon Landau, summarizing the songs on *Nebraska* and anticipating a studio recording, Springsteen wrote that "Atlantic City" should be "done with whole band and really rockin' out." SPRINGSTEEN, SONGS, *supra* note 8, at 140. In fact, although like the rest of the album, the song ultimately remained in its solo format, "Atlantic City" maintained a degree of commercial appeal, serving as the basis for Springsteen's first professionally produced music video. *See* DAVE MARSH, GLORY DAYS: BRUCE SPRINGSTEEN IN THE 1980S 143 (1987).

<sup>23</sup> SPRINGSTEEN, *Atlantic City*, *supra* note 19.

on the losin' end," he searches for a way to keep his promise.<sup>24</sup> Despite the lawlessness that surrounds him, his first choice is to "look[] for a job," but he concludes that "it's [too] hard to find."<sup>25</sup> Thus, having exhausted his legal options, he finally succumbs to the temptation of the only remaining choice, vaguely but unmistakably depicted in the song's final line: "[L]ast night I met this guy and I'm gonna do a little favor for him."<sup>26</sup>

The precise nature of criminal conduct proves unimportant; in fact, a more detailed description of the crime might have detracted from the song's power and purpose. Carefully tracing the evolution of an individual, from dejection to desperation and ultimately to the fateful submission to the pressures to cross the line and commit a crime, Springsteen has presented a broadly applicable model of the sympathetic criminal. In stark contrast to the enigmatic protagonist of the title track, whose crimes linger unexplained and whose cavalier attitude shocks and dismays, the speaker in "Atlantic City" tells us precisely how and why he has arrived at his decision to break the law, and we appreciate the suffering and struggles he has unsuccessfully tried to overcome.<sup>27</sup> Although we may not condone or excuse his conduct, we understand the forces that have driven him to seek solace and success in the world of criminal activity.

### B. "Johnny 99"

The story that begins in "Atlantic City" seems to unfold again in the tale of generically named "Ralph," whose nickname provides the title for "Johnny 99."<sup>28</sup> If "Atlantic City" depicts the forces that lead to a life of crime, "Johnny 99" continues with a complex exploration of the justice system the criminal will now face as a consequence of his actions. Employing third person omniscient rather than first person narrative, Springsteen moves effectively between description and dialogue. With the addition of plaintive

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> BRUCE SPRINGSTEEN, *Johnny 99*, on NEBRASKA (Columbia Records 1982).



singing accompanied by frantic guitar playing and wailing harmonica, he constructs a poignant mosaic of a legal system that serves only to increase our sense of sympathy for the criminal.

Echoing "Atlantic City," the beginning of "Johnny 99" paints a picture of the struggle for survival in an antagonistic and dangerous world. However, unlike the gradual process that culminates in the crime committed at the end of "Atlantic City," Ralph's evolution from a worker in an auto plant into a criminal is depicted in events that transpire in rapid succession. As the song opens, having lost his job and unable to find other work, Ralph quickly descends into drinking and shoots a night clerk, thereby earning the moniker "Johnny 99."<sup>29</sup> He then seems to embrace lawlessness, emerging in a part of town typified in the telling image of a place "where when you hit a red light you don't stop."<sup>30</sup> In a final act of violent desperation, he stands "wavin' his gun around and threatenin' to blow his top."<sup>31</sup>

From this point on, Johnny experiences, both literally and figuratively, a continuous ambush at the hands of the criminal justice system, starting with the off-duty police officer who sneaks up from behind to capture him.<sup>32</sup> Although "the city supplie[s] a public defender," any hopes of a successful defense—or apparently even a fair trial—are eclipsed by the appearance of the judge, "Mean John Brown."<sup>33</sup> Upon entering the courtroom, the judge immediately stares down the accused, prompting the narrator's expression of pity for "poor Johnny."<sup>34</sup> Finding "the evidence is clear" and insisting that the punishment "fit the crime," the judge sentences Johnny to ninety-nine years in prison.<sup>35</sup>

Following the judge's decision, a fistfight occurs in the courtroom, interrupting the interface between the judge and Johnny and expanding the scope of the song's examination of crime, punishment, and their ramifications. Springsteen introduces us first to "Johnny's girl," who has to be dragged away because of her

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

reaction to the sentence, and then to his "mama" who stands up and shouts, "Judge don't take my boy this way."<sup>36</sup> Thus, our sympathy for Johnny is compounded by the pain his sentence inflicts on others,<sup>37</sup> most stirring his mother, whose impassioned plea to the judge rings true as a manifestation of a mother's desperate attempt to help her son in any way she can.<sup>38</sup> Nevertheless, in the justice system Springsteen portrays, these outcries stand unaddressed and unacknowledged—apparently ignored by the judge,<sup>39</sup> who instead turns to the defendant and asks unfeelingly if "you got a statement you'd like to make / Before the bailiff comes to forever take you away."<sup>40</sup>

Johnny's response to the judge, comprising the remainder of the song, finally presents our only opportunity to hear Johnny speak for himself. Although he begins his statement repeating the explanation offered in "Atlantic City" that "I got debts no honest man could pay" and adding that "[t]he bank was holdin' my mortgage and they was takin' my house away,"<sup>41</sup> Johnny does not

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<sup>36</sup> *Id.*

<sup>37</sup> Earlier drafts included references, alternatively, to Johnny's "folks" and Johnny's "dad" as well. SPRINGSTEEN, SONGS, *supra* note 8, at 148.

<sup>38</sup> Cf. Samuel J. Levine, *Taking Prosecutorial Ethics Seriously: A Consideration of the Prosecutor's Ethical Obligation to "Seek Justice" in a Comparative Analytical Framework*, 41 HOUS. L. REV. 1337, 1348-49, 1365-66 (2004) (discussing decision not to file perjury charges against mother of guilty defendant). In earlier drafts, Johnny's mother "screamed" or "cried" to the judge, calling Johnny her "good boy." SPRINGSTEEN, SONGS, *supra* note 8, at 148.

<sup>39</sup> In an earlier draft, the judge responds apologetically to Johnny's mother: "I'm sorry mam but the law must be satisfied / (At the killin'/murderin' hands of your son mam an honest man died)." SPRINGSTEEN, SONGS, *supra* note 8, at 148. The final version evokes greater sympathy both for Johnny, removing the reference to his victim, and for his mother, whose pleas to the judge remain unanswered. SPRINGSTEEN, *Johnny 99*, *supra* note 28.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* Earlier drafts begin, alternatively, with Johnny's response that "I got a wife and kids and responsibilities" and "I worked the assembly line since I was 18." SPRINGSTEEN, SONGS, *supra* note 8, at 148. In both the drafts and the final version of the song, Johnny typifies the working class characters who populate so much of Springsteen's work.

In fact, among the various themes that connect the different songs on *Nebraska*, the portrayal of the lives and economic struggles of the working class may prove most central to the album. For example, in addition to the protagonists of "Atlantic City" and "Johnny 99," the speaker in "Open All

ask to be absolved of criminal responsibility. Instead, Johnny acknowledges that "I ain't sayin' that makes me an innocent man," but he submits himself to the mercy of the court, relying on the judge's acceptance of his claim that "it was more 'n' all this that put that gun in my hand."<sup>42</sup> Despite this request, however, Johnny does not realistically expect clemency, and the song closes with Johnny's strange challenge to the judge, reminiscent more of the title track than of "Atlantic City," to "sit back in that chair and think it over . . . one more time / And let 'em shave off my hair and put me on that execution line."<sup>43</sup>

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Night" laments that "[t]he boss don't dig me so he put me on the nightshift," BRUCE SPRINGSTEEN, *Open All Night, on NEBRASKA* (Columbia Records 1982), while "Mansion on the Hill" pictures "cars rushin' by home from the mill," contrasted with the mansion "risin' above the factories and the fields" and "completely surround[ed]" by "gates of hardened steel." BRUCE SPRINGSTEEN, *Mansion on the Hill, on NEBRASKA* (Columbia Records 1982).

Perhaps most significantly, the child narrating "Used Cars" speaks bitterly of the life in which "[m]y dad he sweats the same job from mornin' to morn / Me I walk home on the same dirty streets where I was born." BRUCE SPRINGSTEEN, *Used Cars, on NEBRASKA* (Columbia Records 1982). The song's title derives from the symbol that embodies the child's despair, the strikingly oxymoronic "brand new used car" that his family purchases, prompting his resentment toward the gawking neighbors, along with his quixotic vow that "mister, the day the lottery I win / I ain't never gonna ride in no used car again." *Id.* His greatest fury, however, seems directed at the salesman who "stare[s] at my old man's hands" while "tellin' us all 'bout the break he'd give us if he could but he just can't." *Id.* Unable to mask his barely contained rage, he responds with the vague but ominous declaration: "Well if I could I swear I know just what I'd do." *Id.* Thus, subtly but powerfully, Springsteen seems to intimate that in the world of *Nebraska*, the child who undergoes such repeated dejection and humiliation may grow up to become a Johnny 99.

<sup>42</sup> SPRINGSTEEN, *Johnny 99, supra* note 28.

<sup>43</sup> *Id.* An earlier draft does not include this somewhat anomalous coda, ending instead with Johnny's unanswered plea for mercy. SPRINGSTEEN, SONGS, *supra* note 8, at 148. In fact, in the earlier version of the song, the judge sentences Johnny to death rather than life in prison, *see id.*, suggesting that Johnny's admission of guilt more fittingly suits an argument that mitigating factors should reduce his sentence from death to life in prison. *See infra* note 44.

In addition, the death sentence may better fit the words used in the judge's offer to Johnny to make a statement: the final version contains the ambiguous phrase, "[b]efore the bailiff comes to forever take you away," SPRINGSTEEN, *Johnny 99, supra* note 28, a line that, out of the context of this story, might at

If Johnny's plea fails to move Mean John Brown, Springsteen's storytelling may yet prove successful in compelling us to examine more thoughtfully the character's predicament and appreciate more fully the emotional and logical appeal of his argument. Without any prospects of a job and faced with the likelihood of a bank foreclosure, a despondent Johnny loses the ability to control his actions. Nevertheless, Johnny seeks not an acquittal but a measure of sympathy for his suffering and consideration of his plight. Thus, consistent with prevailing principles of criminal law, Springsteen does not put forth the more radical contention that the criminal's misfortune should preclude guilt<sup>44</sup>; rather, through its empathic narrative, the song makes a powerful case for the proposition that a broader understanding of the sympathetic criminal's condition warrants more careful attention in a determination of a just and fair sentence.<sup>45</sup>

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least hint to an execution. In the original, the line reads more directly and explicitly, "before you die." SPRINGSTEEN, *SONGS*, *supra* note 8, at 148.

Although the earlier draft, therefore, seems preferable in its greater level of consistency with remainder of the song and its general tone, the final version has the stylistic advantage of a clever connection between the sentencing and Johnny's nickname: "Prison for ninety-eight and a year and we'll call it even Johnny 99." SPRINGSTEEN, *Johnny 99*, *supra* note 28. Thus, the song prompts yet another comparison to Bob Dylan, the artist perhaps most commonly and convincingly evoked in discussions of Springsteen's work, who uses a similar literary technique in the 1975 song "Joey." At the sentencing of the title character, the judge asks: "What time is it?" When Joey answers, "[f]ive to ten," the judge quickly retorts, "[t]hat's exactly what you get." BOB DYLAN, *Joey*, *on DESIRE* (Ram's Horn Music 1975).

<sup>44</sup> See, e.g., Sanford H. Kadish, *Excusing Crime*, 75 CAL. L. REV. 257, 284 (1984). But see Richard Delgado, "Rotten Social Background": Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation, 3 LAW & INEQ. 1, 11 (1985).

<sup>45</sup> See, e.g., Samuel J. Levine, *Playing God: An Essay on Law, Philosophy, and American Capital Punishment*, 31 N.M. L. REV. 277, 283 (2001); Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 363 (1996); Stephen P. Garvey, "As the Gentle Rain from Heaven": Mercy in Capital Sentencing, 81 CORNELL L. REV. 989, 1025 (1996); Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 608 (1995); Samuel H. Pillsbury, *Emotional Justice: Moralizing the Passions of Criminal Punishment*, 74 CORNELL L. REV. 655, 658 (1989). Indeed, Judge Kozinski has candidly described meting out a lenient sentence as a result of feeling empathy for a particular defendant. See

*C. "State Trooper"*

In "State Trooper,"<sup>46</sup> one of the most intense songs on a decidedly intense album—in a way, more an urgent call for help than a song<sup>47</sup>—we meet yet another criminal telling his story, though in a relatively brief and cryptic manner; we have no indication of either what crime he has committed or precisely what led him to a life of crime. Indeed, these details seem largely irrelevant, as his short tale nevertheless adds significant components to Springsteen's portraits of sympathetic criminals. The speaker resembles neither the remorseless enigma of the title track nor the financially desperate characters of "Atlantic City" and "Johnny 99," though like the former he does not regret his actions, while like the latter he provides some explanation for them.

The song's monotonous singing and guitar playing match its dark and dreary setting, the "New Jersey Turnpike . . . on a wet night / 'Neath the refinery's glow out where the great black rivers flow."<sup>48</sup> The speaker drives amidst the gloom with a paranoiac fear of the song's title character, whom he repeatedly begs, in a prayer-like chant that serves as the song's unusual chorus: "Mister state trooper, please don't stop me."<sup>49</sup> Although not privy to the cause of this paranoia, we feel no sense of surprise when the speaker declares flatly: "License, registration, I ain't got none."<sup>50</sup> Whatever his crime, we are quickly informed that "I got a clear conscience 'bout the things that I done."<sup>51</sup> At this point, we wonder about the source of his lack of remorse; perhaps it reflects a Starkweather-

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Alex Kozinski, *Teetering on the High Wire*, 68 U. COLO. L. REV. 1217, 1218-1220 (1997); see also 1 *Ramban* (Nachmanides), COMMENTARY ON THE TORAH 529-530 (Charles B. Chavel trans., 1971) (explicating *Genesis* 44:18) (understanding Judah's lengthy narrative, recounting of the events that had transpired between an unrecognized Joseph and his brothers, as an attempt to evoke Joseph's compassion for them).

<sup>46</sup> BRUCE SPRINGSTEEN, *State Trooper*, on NEBRASKA (Columbia Records 1982).

<sup>47</sup> As Springsteen himself wrote in a note to his manager Jon Landau, "I don't know if it's even really a song or not . . . It's kinda weird." SPRINGSTEEN, *SONGS*, *supra* note 8, at 141.

<sup>48</sup> SPRINGSTEEN, *State Trooper*, *supra* note 46.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

like callousness, or alternatively, a feeling of the helplessness and hopelessness found in "Atlantic City" and "Johnny 99."

The next stanza succinctly answers these questions. Appealing to the pity of the state trooper, and in the process successfully gaining our sympathy, the speaker speculates that "[m]aybe you got a kid, maybe you got a pretty wife."<sup>52</sup> We can thus infer that unlike the protagonists of "Atlantic City" and "Johnny 99," who do not lack companionship—and indeed, who turn to crime as a means of sustaining their relationships—the driver in "State Trooper" suffers from a deeply jealous lonesomeness, accentuated by the literal and metaphorical darkness that surrounds him. In an effective turn of a phrase, Springsteen contrasts the image of the state trooper as a happily married father against the speaker's self-descriptive lament, both vague and disturbing, that "[t]he only thing that I got's been botherin' me my whole life."<sup>53</sup> The song's short coda consists of the speaker's desperate call for "somebody out there [to] listen to my last prayer" and "deliver me from nowhere," followed by the primal howls that close the song.<sup>54</sup>

Thus, in "State Trooper," Springsteen presents yet another model of a sympathetic criminal, perhaps the most sympathetic on the album, whose troubled situation calls on us to accept the seeming inevitability of his criminal conduct. The driver's lonely desperation stems neither from external pressures nor from financial hardship, but instead from a deeper existential angst borne out of a lifetime of suffering, apparently beyond remedy or repair. Springsteen's portrait thereby evokes in us a reaction strikingly different from our response to the remorseless Starkweather. Rather than feeling puzzled or repulsed by the driver's lack of contrition, we begin not only to understand his justifications but perhaps to concur with his disquieting conclusion that he need not maintain a guilty conscience for the crimes he has committed.

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

### III. THE CRIMINAL AS BROTHER: "HIGHWAY PATROLMAN"

Unlike the other criminals Springsteen depicts in the songs on *Nebraska*, who are either caught in the criminal justice system or desperately trying to avoid it, Frankie Roberts successfully and completely escapes the reach of the law.<sup>55</sup> In fact, in remarkable fulfillment of the driver's helpless and hopeless plea in "State Trooper," the title character of "Highway Patrolman" declines to stop the criminal, deliberately allowing him to go free. However, unlike many of the sympathetic criminals on the album, Frankie does not represent an individual who seeks or receives special treatment as a reflection of the legal system's willingness to recognize conditions that may excuse or mitigate the gravity of criminal conduct. Rather, the motivation behind the highway patrolman's unusual decision involves more personal considerations with little connection to notions of fairness. As the character explains in slow, elegiac narration, despite his duty to uphold the law, he has a more basic and overriding allegiance: the obligations befitting him as Joe Roberts, Frankie's brother.<sup>56</sup>

Perhaps the most accomplished song on the album, "Highway Patrolman" consists of three segments. The initial segment sets the stage for and foreshadows the rest of the story, introducing first the narrator, a sergeant who has "always done an honest job"—at least "as honest as I could"—and then his brother Frankie, described in the stark style characteristic of the album: "Frankie ain't no good."<sup>57</sup> Springsteen succinctly summarizes the brothers' complex relationship, including both the conflicts and the loyalties that exist between them. On one level, the sharp difference in their behavior and their roles, cop and criminal, creates an unavoidable tension: "ever since we were young kids it's been the same comedown / I get a call over the shortwave Frankie's in trouble downtown."<sup>58</sup> On a deeper level, however, the bonds that have always connected them as brothers are not easily broken, so that even an honest

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<sup>55</sup> BRUCE SPRINGSTEEN, *Highway Patrolman*, on NEBRASKA (Columbia Records 1982).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

highway patrolman tolerates a rare exception: "if it was any other man I'd just put him straight away / But when it's your brother sometimes you look the other way."<sup>59</sup>

The introduction is followed by the first appearance of the chorus, the song's only lines performed above a monotone, powerfully recounting the memory of a distant and happier time: "Me and Frankie laughin' and drinkin' / Nothin' feels better than blood on blood / Takin' turns dancin' with Maria / As the band played 'Night of the Johnstown Flood.'"<sup>60</sup> As the chorus moves abruptly back into the present, leaving the faded picture of simple innocence, we not only realize the relevance of this brief interlude, but we begin to understand how its memory dominates the perspective and actions of Joe Roberts. Returning to a resigned monotone, the narrator declares, "I catch him when he's strayin'," adding, "like any brother would."<sup>61</sup> Finally, in exhortation as much as explanation, he proclaims in categorical terms: "Man turns his back on his family, well he just ain't no good."<sup>62</sup>

The next segment serves as the bridge between the introduction and the song's central episode, providing further background and insight into the sympathy Joe Roberts feels for Frankie. Specifically, we learn that following the innocence of youth that they experienced together, the brothers' fates diverged dramatically. Frankie entered the army for a three year tour of duty, while Joe received a farm deferment, "settled down" and "took Maria for my wife."<sup>63</sup> The reprise of the chorus now becomes more poignant; we can fully appreciate the contrast between the days gone by, when the brothers laughed and drank together while trading dances with Maria, and the present, when the narrator, married to Maria, struggles with the responsibility he owes his brother, a Vietnam veteran turned to crime. The chorus concludes with another description of Joe's concern for Frankie, "I catch him when he's strayin', teach him how to walk that line,"

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*



again followed by a statement of principle: "Man turns his back on his family, he ain't no friend of mine."<sup>64</sup>

As the narrative continues, we approach the moment when Joe will face the ultimate choice between his conflicting senses of duty. On an unremarkable night that begins "like any other," he answers a call of "trouble" to an anonymous "roadhouse," finding "a girl cryin' at a table" and "a kid lyin' on the floor lookin' bad, bleedin' hard from his head."<sup>65</sup> Of all of the crimes planned, perpetrated, and pondered on the album, Springsteen chooses this event to include the most violent details, directing our sympathy to the victim and essentially precluding the kind of pity we have felt for some of the other criminals. Amidst this graphic scenario, Joe's worst fears—and our own suspicions—are quickly confirmed when he learns that "it was Frank."<sup>66</sup>

The highway patrolman responds immediately and instinctively: "I jumped in my car and I hit the lights / I must of drove 110 through Michigan county that night."<sup>67</sup> After an unspecified amount of time has passed, reaching an isolated "crossroads down 'round Willow bank," he spots "a Buick with Ohio plates [and] behind the wheel [is] Frank."<sup>68</sup> The suspense builds as the showdown between the lone brothers commences. Acting out of his duty as an officer of the law, the narrator proceeds with the pursuit, "chas[ing] him through them county roads till a sign said 'Canadian border 5 miles from here.'"<sup>69</sup>

In the end, however, the highway patrolman is transformed back into Frankie's brother, all other concerns and responsibilities ultimately yielding to his brotherly allegiance to Frankie. Left with no other means of exercising his loyalty to his brother, Joe suspends the chase and "pull[s] over the side of the highway."<sup>70</sup> In the story's closing line, sung with audible emotion and apparent regret, he "watche[s] Frankie's] taillights disappear."<sup>71</sup> The song

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

concludes with the narrator's final rendition of the chorus, now almost a dirge, evoking a past that he recognizes will forever elude him.

In this moving portrait of a highway patrolman, Springsteen explores the mindset of a central figure in the criminal justice system, composing an episode that illustrates the ambivalence and conflicts that may often exist within those charged to enforce the law. In the process, Springsteen presents another portrait, of a criminal who receives—even if he does not deserve—the most sympathetic treatment of all of the criminals who inhabit the album. As we listen to the powerful narration of the song, told through the perspective of Joe Roberts, we understand and appreciate his attitudes and actions. Indeed, putting ourselves in his place, we cannot help but begin to feel compassion for Frankie as well. After all, as the narrator repeatedly reminds us, once we picture Frankie as our own brother, we owe him our sympathy and our support, the question of whether he deserves it now proving immaterial.<sup>72</sup> Thus, through a story of two brothers, closely connected but playing opposing roles in the legal system, Springsteen leaves us to ponder difficult questions that stand at the boundaries of law and loyalty, questions that force us to confront the complexity of striking the appropriate balance between justice and mercy.<sup>73</sup>

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<sup>72</sup> On a broader level, nearly every criminal must be someone's brother or sister, daughter or son, distant relative or casual friend, whose just punishment may therefore inextricably cause pain to others. See RABBI YOSEF DOV HALEVI SOLOVEITCHIK, BEIS HALEVI: COMMENTARY ON THE TORAH 529-530 (explicating *Genesis* 44:18-34) (explaining Judah's plea to an unrecognized Joseph not to punish Benjamin, despite his apparent—though contrived—crime, in consideration of the pain it would bring to his father Jacob, who was innocent of any crime).

<sup>73</sup> See, e.g., Suzanne Last Stone, *Justice, Mercy, and Gender in Rabbinic Thought*, 8 CARDOZO STUD. L. & LITERATURE 139, 140 (1995); Benjamin Zipursky, *DeShaney and the Jurisprudence of Compassion*, 65 N.Y.U. L. REV. 1101, 1147 (1990); Martha L. Minow & Elizabeth V. Spelman, *Passion for Justice*, 10 CARDOZO L. REV. 37, 37 (1988); see also *supra* note 45.

## CONCLUSION

Although the style and substance of *Nebraska* may have surprised its listeners when it first appeared in 1982, in retrospect, the album stands as a milestone in the collected work of Bruce Springsteen. Sandwiched between *The River* and *Born in the U.S.A.*, two of Springsteen's most carefully produced and commercially successful albums, *Nebraska* was recorded by Springsteen while he sat on a chair in his bedroom, singing and playing into a four-track tape machine.<sup>74</sup> In what has become an integral part of Springsteen lore, he placed the completed "demo" tape in the back pocket of his jeans and entered the studio, planning to record the album with the E Street Band. Dissatisfied with the results of the studio efforts, however, Springsteen ultimately concluded that the original recording represented the most appropriate version of the album.<sup>75</sup> These events not only demonstrate Springsteen's willingness to sacrifice commercial goals in favor of artistic integrity; they attest to his artistic judgment as well. It seems highly unlikely that the themes and messages that permeate *Nebraska*, making it such a compelling work, would prove nearly as effective if accompanied by any other musical style.

Reflecting upon *Nebraska* more than sixteen years after it first appeared, Springsteen wrote:

If there's a theme that runs through the record, it's the thin line between stability and that moment when time stops and everything goes to black, when the things that connect you to your world—your job, your family, friends, your faith, the love and grace in your heart—fail you.<sup>76</sup>

For many of the central characters on the album, that thin line has been crossed and stability destroyed in the moment a crime was pondered, planned, or perpetrated. Through carefully crafted narratives about these characters, Springsteen has powerfully produced a variety of insightful portraits of criminals, providing a

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<sup>74</sup> See SPRINGSTEEN, SONGS, *supra* note 8, at 135.

<sup>75</sup> See *id.* at 139.

<sup>76</sup> *Id.* at 138-39.

valuable context for thoughtful consideration of crime, its ramifications, and the American criminal justice system.

